

In the Matter of License No. 256933
and all other Seaman Documents
Issued to: VIRGIL E. MCCOY

DECISION OF THE COMMANDANT
UNITED STATES COAST GUARD

1244

VIRGIL E. MCCOY

This appeal has been taken in accordance with Title 46 United States Code 239(g) and Title 46 Code of Federal Regulations 137.11-1.

By order dated 25 August 1960, an Examiner of the United States Coast Guard at New Orleans, Louisiana suspended Appellant's seaman documents for six months upon finding him guilty of misconduct. The five specifications found proved allege that while serving as Junior Third Assistant Engineer on board the United States SS ALCOA PILGRIM and SS GENEVIEVE LYKES under authority of the license above described, appellant failed to perform his duties on three occasions, he left his duty station without permission, and he used profane, abusive and threatening language to the night engineer of another ship. The Examiner concluded that the sixth specification was not proved.

At the hearing, Appellant was represented by counsel. Appellant entered a plea of not guilty to all except two of the specifications.

The Investigating Officer introduced in evidence certified copies of entries in the ship's Official Logbook for the voyage.

In defense, Appellant offered in evidence his testimony and medical exhibits to show that he was ill while on the ALCOA PILGRIM. Appellant testified that he had dizzy spells and severe headaches.

FINDINGS OF FACT

On 25 October 1959, Appellant was serving as Junior Third Assistant Engineer on the United States SS GENEVIEVE LYKES and acting under the authority of his license while the ship was at Corpus Christi, Texas.

On this date, Appellant directed profane, abusive and threatening language toward the night engineer on another ship while Appellant was standing on the wharf.

Between 6 November 1959 and 6 January 1960, Appellant was serving as Junior Third

Assistant Engineer on the United States SS
ALCOA PILGRIM and acting under authority of his license.

On 23 December 1959 while the ship was at sea, Appellant failed to perform his duties due to intoxication. On the following day, the Master was told by Appellant that he was sick.

The ship was at Santos, Brazil between 30 December 1959 and 6 January 1960.

On 31 December, Appellant was in charge of the engine room watch, preparing to change boilers, when he left the engine room for a period of about ten minutes without having obtained permission to leave or notifying any other engineering officer.

On 1 and 2 January, Appellant failed to report for duty.

From 5 to 15 January, Appellant was hospitalized at Santos. Upon returning to the United States, he reported to the Public Health Service Hospital at New Orleans and was an outpatient from 20 January until 29 January when he was declared fit for duty. Appellant's condition was diagnosed as: "Essentially vascular hypertension [high blood pressure] Syncope, cause unknown."

Appellant's prior record consists of a six months' suspension in 1956 for failure to obey a lawful order, attempt to kick the ship's night engineer, and attempt to urinate on him.

BASES OF APPEAL

This appeal has been taken from the order imposed by the Examiner. It is contended that there was a denial of due process and the order of suspension is unduly harsh.

The logbook entries for 31 December, 1 January and 2 January are improper because Appellant's only opportunity to reply to them was on 3 January when he stated that he was not intoxicated on 31 December. Appellant should have been given an opportunity to reply individually to each log entry.

The value of the logbook entries was overcome by the evidence which shows that Appellant was suffering from syncope (fainting caused by a temporary deficiency of blood supply to the brain).

The Coast Guard does not have jurisdiction, as to the offense alleged to have occurred on 25 October 1959, because Appellant was on the wharf.

It is respectfully submitted that the order should be modified to an admonition for the offense on 23 December 1959 to which Appellant entered a plea of guilty.

APPEARANCE: George Smill, Esquire, of New Orleans, Louisiana, of Counsel.

OPINION

The logbook states that the entries of 31 December, 1 January, and 2 January were read to Appellant and copies given to him before he made his reply. Appellant could have submitted separate replies as to each entry if he had desired to do so. This was substantially in compliance with the requirements of 46 U.S.C. 702.

The value of the logbook entries is not materially affected by the medical evidence and Appellant's testimony that he was ill on 31 December, 1 January and 2 January because there is no evidence that he attempted to be relieved of his duties on these dates. On 1 and 2 January, Appellant failed to report for duty apparently without notifying anybody. Concerning his leaving the engine room on 31 December without permission, Appellant admitted in his testimony that his was not proper. Whether or not he was intoxicated at this time has no bearing on the offense of leaving his duty station.

For these reasons, it is my opinion that the logbook entries constitute substantial evidence in support of these three specifications to which pleas of not guilty were entered by Appellant.

There was jurisdiction to proceed with respect to the incident on 25 October 1959 because Appellant was in the service of the GENEVIEVE LYKES even though he was ashore at the time of this minor offense. Appellant's plea of guilty obviated the need to introduce in evidence the deposition of the night engineer which the Investigating Officer had requested at the beginning of the hearing.

Since these five offenses have been proved by the evidence, the order imposed by the Examiner is not considered to be excessive.

ORDER

The order of the Examiner dated at New Orleans, Louisiana, on 25 August 1960, is AFFIRMED.

J. A. Hirshfield
Vice Admiral, United States Coast Guard
Acting Commandant

Signed at Washington, D. C., this 7th day of June 1961.